PATENT
Attorney Docket No. LOREAL 3.0-065

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)
Jean-Louis GUERET	) Group Art Unit: 3732
Application No.: 10/721,552	) Examiner: Rachel A. Running
Filed: November 25, 2003	)
For: APPLICATOR FOR APPLYING A SUBSTANCE ONTO KERATINOUS FIBERS	) Confirmation No.: 5845

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DECLARATION UNDER 37 C.F.R. § 1.132

1. I, Jean-Louis GUERET, am a French citizen, residing at 27, Avenue Raymond Poincaré, 75008 Paris FRANCE.

2. I hold the position of Cosmetic prospective Packaging Director with L'Oreal France, at 14, rue Royale, 75008 Paris FRANCE. During my employment with L'Oreal, I have been engaged in research and development regarding applicators, among other things.

3. I am the sole inventor of U.S. Application No. 10/721,552, entitled "Applicator for Applying a Substance onto Keratinous Fibers," and I am familiar with the application.

4. I understand the rejections made in the Office Action of May 19, 2008, in Application No. 10/721,552, and the references referred to therein.

5. The claimed invention relates to an applicator for applying substances to keratinous fibers, possessing improved retention characteristics for the substances to be applied following wiping of the bristle-carrying portion of the applicator, among other things.

6. I note that the Office Action of May 19, 2008 alleges that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have bristle-carrying portion make an angle of less than about 20 degrees relative to the longitudinal axis of the rod.[1] I respectfully disagree. The Specification itself provides evidence that the improved retention of substances on the bristles can be achieved where substantially all points of the bristle-carrying portion form an angle greater than 0 degrees and less than about 20 degrees relative to the longitudinal axis of the end portion of the applicator rod (e.g., 0.2 degree to about 20 degrees). Such limitations are employed in the claimed range. This result was unexpected, and it has practical significance because the ability to retain greater amounts of a substance on the bristles, following wiping, enables greater amounts of a substance to be applied to keratinous fibers, and has long been a desire in the art.

7. I have performed additional experiments beyond those described in the Specification to show that the claimed angular range for substantially all bristles of the bristle-carrying portion results in better retention of substances on the bristles of the

[1] I note that in the Office Action dated May 19, 2008, the Examiner considers only the upper end of the claimed range and not noting the lower end of the claimed range (greater than 0 degrees). I address the rejection as though the Examiner has considered the complete range as claimed, i.e., greater than 0 degrees and less than about 20 degrees.

bristle-carrying portion following wiping of the bristle-carrying portion. The experimental data is summarized in Exhibit 1, which contains Examples A, B, and C.

8. In Examples A, B, and C, I prepared three applicators (1, 2, and 3) for applying substances to keratinous fibers. In addition, three identical substance containers including identical substances and identical wipers were prepared, one for each of the applicators 1, 2, and 3. Applicator 2 was prepared according to one embodiment of the invention and having an angle of 8 degrees relative to the longitudinal axis of the rod for substantially all bristles of the bristle-carrying portion. Applicators 1 and 3 were prepared as comparative examples using angles of 0 degrees and 30 degrees relative to the longitudinal axis of the rod, respectively, for substantially all of the bristles of the bristle-carrying portion, which is outside of the claimed range.

9. Three experiments were then performed:

a. In example A, applicator 1 having an angle of 0 degrees for substantially all bristles of the bristle-carrying portion, relative to the longitudinal axis of the rod was inserted into the substance container and removed, affecting a wiping of the bristle-carrying portion. Weight of the substance retained on the bristles was then measured.

b. In example B, applicator 2, having an angle of 8 degrees for substantially all bristles of the bristle-carrying portion, relative to the longitudinal axis of the rod was inserted into the substance container and removed, affecting a wiping of the bristle-carrying portion. Weight of the substance retained on the bristles was then measured.

c. In example C, applicator 3, having an angle of 30 degrees for substantially all bristles of the bristle-carrying portion, relative to the longitudinal axis of the rod was inserted into the substance container and removed, affecting a wiping of the bristle-carrying portion. Weight of the substance retained on the bristles was then measured.

10. The results of these three experiments are shown in the table of Exhibit 1.

11. I note that the mass of material retained upon bristles of an applicator following wiping is a general indicator of satisfaction of a user of such an applicator and it has long been desirable to retain a maximum amount of material on the bristles of the applicator.

12. I further note that one of ordinary skill in the art would expect a brush with an angle associated with the bristle-carrying section to result in lower substance retention based at least on the wiping action that takes place upon moving the bristle-carrying portion through the wiper of the container (e.g., when removing the applicator from the substance container). Further, one of ordinary skill in the art would expect a bristle-carrying portion with an angle of 0 degrees to result in maximum retention of material on the bristles following wiping based on the perceived reduced interference from the wiper upon removal from the container.

13. As shown in the attached Exhibit 1, applicator 2, which was prepared according to embodiments of the invention, retained substantially more of the substance than the applicators prepared for the purpose of comparison. The results show that bristle-carrying portions having an angle of 8 degrees, within the claimed range, has the

advantageous result of retaining at least 0.7 grams more substance than an those having an angle of 30 degrees and, remarkably, 0.3 grams more substance than those having an angle of 0 degrees. This finding was unexpected. Because these results were unexpected, it was not mere optimization to discover that the claimed range of angles for bristle-carrying portions would result in retention of additional substance retention.

14. I further note that from the teaching of *Anakama* and *Gueret* a skilled person could not foresee by any means that the claimed range of angles for the bristle-carrying portions would increase the substance retention of the bristles following wiping. The unexpected finding above would not have been obvious from the prior art.

15. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 2-2-09 By: Jean-Louis H Gueret

Attachments: Exhibit 1

Comparative tests

	Brush of triangularly cross-section	
	Angle	Quantity of product loaded on the brush after wiping (g)
A	0°	0,40
B	8°	0,43
C	30°	0,36

EXHIBIT 1